INTRADEPARTMENTAL CORRESPONDENCE

March 1, 2018
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TO: The Honorable Board of Police Commissioners

FROM: Chief of Police

SUBJECT: OFFICER INVOLVED SHOOTING FID NO. 042-17

Honorable Members:

The following is my review, analysis, and findings for Officer Involved Shooting (OIS), Force Investigation Division (FID) No. 042-17. A Use of Force Review Board (UOFRB) was convened on this matter on February 21, 2018. I have adopted the recommendations from the UOFRB for this incident. I hereby submit my findings in accordance with Police Commission policy.

SUMMARY[1]

On June 6, 2017, at approximately 2050 hours, Communications Division (CD) broadcast the following call for service, *"Harbor units, 415 man with a gun, Wilmington Boulevard, Pacific Coast Highway, Wilmington Boulevard, Pacific Coast Highway. Suspect is walking on the sidewalk, male Hispanic, 30 years, black clothing, on foot Wilmington toward Anaheim carrying an unknown type handgun in his hand. Stand by for additional. It's code-Three."*

> **Note:** The investigation revealed that the 911 call for service was generated by Witness A. Mejia. According to Mejia, he was in his *front yard*, when he observed a *male*, later identified as E. Rivera, approximately *20 feet north* of his residence, *walking south* on the west sidewalk of Wilmington Boulevard from Pacific Coast Highway (PCH) *with a gun in his right hand.*

Officers A. Martinez, Serial No. 41620, and M. Sternin, Serial No. 42725, Harbor Patrol Division, were in full uniform, driving a marked black and white police vehicle. The officers heard the broadcast and advised CD they were responding to the radio call.

Officers D. Ramirez, Serial No. 40185, and A. Urrutia, Serial No. 36065, Harbor Patrol Division, heard the radio broadcast and advised CD they would be responding to back-up the primary unit. Sergeant J. Talmage, Serial No. 34671, Harbor Patrol Division, was monitoring the radio traffic and advised CD that he would also be responding to the call.

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[1] The summary and the investigation completed by FID for this incident have been provided to the Board of Police Commissioners.

Note: At approximately 2052 hours, Officers Martinez, Sternin, Ramirez and Urrutia, arrived at the scene, advised CD they were *Code Six in the area,* and activated their Body Worn Video (BWV) cameras.

According to Officer Urrutia, as they drove *south* on Wilmington Boulevard from PCH, they began *scouring the area* for Mejia. *At one point*, they *met up* with Officers Martinez and Sternin, who were driving *north* on Wilmington Boulevard, and they communicated with each other that *they hadn't seen anything.*

At approximately 2053 hours, CD broadcasted the following additional information, *"Harbor units, additional on the 415 man with a gun, Wilmington and PCH, the suspect was last seen on foot toward a Mexican market, toward Anaheim [Boulevard]."*

Note: Video footage obtained from a surveillance camera located at 1149 North Wilmington Boulevard, captured Rivera walking on the west sidewalk of Wilmington Boulevard, holding an object that appeared to be a handgun, in his right hand.

According to Officer Ramirez, he *continued driving south, at a very slow speed,* toward a market located on I Street. As he approached *the area of Denni Street and Wilmington Boulevard*, he looked to his *right* and observed Rivera *walking south on the west sidewalk* of Wilmington Boulevard. Rivera was walking past *two vehicles* that were *parked against the curb,* so he *could not see if* Rivera *had anything in his hands.*

Note: A review of the BWV revealed that Officer Ramirez stated to his partner, *"Maybe on my right."* Rivera is then heard saying, *"What's up? What the fucks up?"*

According to Officer Urrutia, as they *came up on some cars* along the west side of Wilmington Boulevard, there was *an opening,* where he observed Rivera *walking south on the west sidewalk* in front of *a driveway* of *a little apartment complex.* Rivera was *saying* something *indiscernible,* then *turned around to his left, looked at* him and started *yelling out loud.* Rivera *sounded very angry, looked angry* and had a *fierce look in his eyes.*

According to Officer Urrutia, he *looked at* Rivera's *waist area* and observed that he was *holding a gun in his right hand.* He advised his partner, *"Gun," opened* his *door,* exited, drew his service pistol, and assumed a position of *cover* behind his *passenger side ballistic door panel* (Drawing/Exhibiting).

Note: A review of the BWV revealed that Officer Urrutia stated to his partner, *"Oh shit. Partner gun."*

According to Officer Urrutia, he *gave* Rivera *commands to drop the gun.* Rivera ignored his commands and *started to walk towards* them, while *aiming* the handgun at him and his partner. *Fearing that* Rivera *was going to kill* him *and* his *partner,* he fired four rounds from his service pistol at Rivera to stop the threat (Lethal Use of Force).

Note: Officer Urruita's commands were captured on his BWV.

According to Officer Ramirez, after Rivera *passed* the parked *cars* he *could see* Rivera's *whole body*. He *started to turn* their police vehicle in a southwesterly direction, *diagonal to* Rivera, to ensure they *had cover* and initiate a *felony stop*. He then heard his partner say, "*Oh shit. Gun,*" as he [Ramirez] *simultaneously* observed Rivera *look over his right shoulder* and yell profanities at them.

Within a split second, Rivera *turned completely around* and then he observed that Rivera was *carrying a black semi-auto handgun in his left hand*. Rivera then *raised* the handgun *slightly*. Believing that he may *have to shoot through the windshield,* he *immediately* drew his service pistol (Drawing/Exhibiting).

According to Officer Ramirez, Rivera then *lowered* the handgun, at which time he *believed* that he used his *right hand to put* the vehicle *in park*. He then *jumped out* of the vehicle and assumed a position of *cover* behind his driver's side ballistic *door panel*.

Note: Officer Ramirez' BWV revealed that he did not place the vehicle in park or appear to make any movements consistent with placing the police vehicle in park (Additional Tactical Debrief Topics – Situational Awareness).

According to Officer Ramirez, he gave Rivera commands to *drop the gun*. Rivera ignored his commands and *raised* the handgun in his direction. Believing Rivera was *going to shoot* him *and* his *partner*, he fired seven rounds from his service pistol at Rivera to stop the threat (Lethal Use of Force).

Note: Officer Ramirez' commands were captured on his BWV.

According to Officer Ramirez, after firing his service pistol, Rivera *grabbed his side* and *went down* to the ground. He then heard his partner say, "*The car*," and *realized* the police vehicle was moving forward and *may not be in park.*

He then holstered his service pistol, and attempted to *jump in* the vehicle, but it *was moving too fast*. He *tried* to put his *foot on the brake*; however, in attempting to do so, he may have hit *the brake and the gas at the same time*. The vehicle *continued* on its *course, went over* Rivera and *then crashed into a fence.*

Note: The investigation revealed that Officers Ramirez and Urrutia's police vehicle made contact with Rivera after the OIS and then collided with a wrought iron gate attached to a carport located at 1109 North Wilmington Boulevard. These events were documented in a Traffic Collision Report, DR No. 17-0511336.

According to Officer Ramirez, he *noticed* Rivera was *underneath the vehicle* and *was going to try and pull him out*. However, he realized Rivera *might still be armed*, so he drew his service pistol for a second time (Drawing/Exhibiting).

According to Officer Urrutia, after firing his service pistol, Rivera went *down on his knees and then on his side* and appeared to be *moving*. He then *felt the car start to slowly move forward* and *yelled out* to his partner, "*Hit the brake!*" He *started to move forward with the vehicle*, but *tripped* and *fell to the ground*, striking his *elbow on the pavement*. Although he was in *extreme pain*, he *got up* and broadcast a *help call*.

> **Note:** Officer Urrutia's broadcast was not captured on the Harbor Area base frequency. A review of the BWV reflects that Officer Urrutia broadcast, *"Officer needs help. Shots fired. Officer needs help. Shots fired. 1109 Wilmington,* followed by an additional broadcast to CD advising them to *"Have officers respond southbound Wilmington only, from L Street or PCH."*

According to Officers Martinez and Sternin, as they were driving east on L Street, approaching Wilmington Boulevard, they *heard multiple gunshots*. They communicated with each other that they had heard gunfire and then *broadcast that there were shots fired in the area of L Street and King*.

As they made a southbound turn onto Wilmington Boulevard, they observed Officers Urrutia and Ramirez in the street *with their weapons drawn*. They parked north of Officers Ramirez and Urrutia's vehicle, exited and assumed a position of *cover* behind their respective ballistic *door panels*.

According to Officers Urrutia and Ramirez, they redeployed and assumed a position behind Officers Martinez and Sternin's ballistic door panels. They advised them that Rivera was on the ground in front of their vehicle, and then they awaited the arrival of additional units.

> **Note:** While awaiting the arrival of additional units, Officer Urrutia can be heard on the audio of his BWV stating, *"As soon as we go Code Four, I'm goanna need an RA. I don't know if I'm hit dude"*, followed by him moaning as if he was in pain. Officer Urrutia then states, "*Cover down, get me an officer here, get me an officer here to take my place.*"

According to Sergeant Talmage, upon arrival, he parked his police vehicle in a northwesterly direction, just south of the OIS scene, in a manner that would *triangulate on the suspect*. As he exited his police vehicle, the officers *yelled at* him that Rivera was *under* the police vehicle that was in front of him.

He observed that Rivera was *trapped under the car, not moving at all,* and that Rivera appeared to be *deceased*. He immediately requested a Rescue Ambulance (RA) and then walked over to the officers *to get an assessment of what was happening.*

According to Sergeant Talmage, he did not want to move Rivera or the police vehicle without medical personnel being present for fear that either movement could cause additional injury or *exasperate* the existing injury. Therefore, he formulated a plan to establish an arrest team and

approach Rivera only after Los Angeles Fire Department (LAFD) personnel were at scene. This would ensure that Rivera received prompt medical attention once it was deemed safe for LAFD personnel to approach Rivera (Command and Control).

Sergeant B. Hearn, Serial No. 31170, Watch Commander, Harbor Patrol Division, responded and assumed the role of Incident Commander (IC) from Sergeant Talmage.

After the arrival of LAFD personnel, Sergeant Talmage and the contact team approached Rivera and determined that he was not armed and was safe to approach. LAFD personnel then assessed Rivera at the scene, determined he had succumbed to his injuries, and subsequently pronounced him deceased at the scene at 2110 hours (Command and Control).

> **Note:** A green and black colored plastic toy water gun was recovered from the driveway of 1109 North Wilmington Boulevard near Rivera's body.

LAFD personnel also treated Officer Urrutia at scene for an injury to his right elbow and then transported him to Harbor-University of California Los Angeles Medical Center where he was examined for a strained right arm and contusion to his right elbow. Sergeant J. Doull, Serial No. 35993, Harbor Patrol Division, accompanied Officer Urrutia to the hospital and obtained a Public Safety Statement (PSS) from him.

Detective J. Zamora, Serial No. 32510, Harbor Area, Narcotics Enforcement Detail, responded and obtained a PSS from Officer Ramirez.

FINDINGS

Tactics – Tactical Debrief, Officers Ramirez and Urrutia.

Drawing/Exhibiting – In Policy, No Further Action, Officers Ramirez and Urrutia.

Lethal Use of Force – In Policy, No Further Action, Officers Ramirez and Urrutia.

ANALYSIS[2]

Detention

The officers responded to a radio call of a 415 Man with a Gun. As the involved officers drove south on Wilmington Boulevard, they observed the suspect standing on the sidewalk holding a handgun in his hand. When the officers gave the suspect commands to drop the gun, the suspect pointed the gun in their direction, resulting in an OIS. The officers' actions were appropriate and within Department policies and procedures.

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[2] The analysis reflects my recommendations as supported by the preponderance of the evidence established by the investigation.

Tactics

> *Department policy relative to Tactical Debriefs is: "The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance" (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation

> *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques).*

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

In this case, the involved officers were faced with a rapidly unfolding tactical situation when they observed the suspect on a sidewalk holding a handgun in his hand. When the officers gave the suspect commands to drop the gun, the suspect turned toward the officers and pointed the gun in their direction.

Faced with an imminent threat of serious bodily injury or death, the officers utilized lethal force to stop the deadly threat.

During a review of the incident, the following Additional Tactical Debriefing Points were noted:

Additional Tactical Debrief Topics

Situational Awareness – The investigation revealed that Officer Ramirez exited the vehicle to engage an armed suspect without placing the vehicle in park. As such, the vehicle continued to roll forward alongside Officers Ramirez and Urrutia and towards Rivera. Officer Ramirez is reminded that not placing the vehicle park can place officers and the community in danger. I will direct that this be a topic of discussion during the Tactical Debrief.

Command and Control

Sergeant Talmage responded, assumed the role of IC and assessed the ongoing tactical situation. He ensured the well-being of Officer Urrutia, who was initially reported to have been struck by gunfire, and formulated a tactical plan to take Rivera into custody and get him medical treatment as soon as possible.

However, the UOFRB noted that when the contact team approached Rivera there appeared to be some confusion amongst the officers as to their individual roles and responsibilities. Although, the suspect appeared to display no obvious signs of life to Sergeant Talmage, Sergeant Talmage is reminded of the importance of ensuring that all personnel at the scene are aware of the tactical plan.

Sergeant Hearn responded and assumed the role of IC from Sergeant Talmage. He requested additional supervisors to the scene and ensured the involved officers were identified, separated and monitored.

Sergeant Doull responded, accompanied Officer Urrutia to the hospital and obtained a PSS from him. Detective Zamora responded and obtained a PSS from Officer Ramirez.

The actions of these supervisors were consistent with Department supervisory training and met my expectations of field supervisors during a critical incident.

Tactical Debrief

Each tactical incident merits a comprehensive debriefing. In this case, there were identified areas where improvement could be made and a Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Therefore, I will direct that Officers Ramirez and Urrutia attend a Tactical Debrief and that the specific identified topics are covered.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Radio and Tactical Communication (including Code Six);
- Tactical Planning;
- Tactical De-Escalation;
- Command and Control; and,
- Lethal Force.

General Training Update (GTU)

On June 29, 2017, Officers Ramirez and Urrutia attended a GTU. All the mandatory topics were covered, including Pedestrian Contacts and Force Option Simulator.

Drawing/Exhibiting

> *Department policy relative to drawing and exhibiting a firearm is: "An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified" (Los Angeles Police Department Manual, Volume No. 1, Section 556.80).*

According to Officer Ramirez, he heard his partner say, "*Oh shit. Gun.* ", observed Rivera turn around with a handgun in his left hand and *immediately* drew his service pistol. Officer Ramirez recalled,

> *...my partner said, 'Oh shit. Gun.'...I didn't see the gun at first...within a split second, I saw it because he was making...he was completing his clockwise turn. So that's when I saw it. Immediately, then, I drew it.*[3]

According to Officer Urrutia, he observed Rivera *holding a gun in his right hand,* exited the vehicle and drew his service pistol.

Officer Urrutia recalled,

> *As soon as I exited the vehicle, I drew my firearm, because I had a reasonable belief the situation could escalate to the use of deadly force. That's when I drew my firearm.*[4]

According to Officer Ramirez, he *noticed* Rivera was *underneath the vehicle* and *was going to try and pull him out* and then realized Rivera *might still be armed,* so he drew his service pistol for a second time.

Officer Ramirez recalled,

> *...once I was trying to stop the car, I holstered...because it's pretty much impossible to throw it in park with a left hand with the gun...and then, after it was unsuccessful and it crashed...I drew out again...Because I don't know if he's still alive or still armed.*[5]

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Ramirez and Urrutia, while faced with similar

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[3] Officer Ramirez, Page 26, Lines 15-24.
[4] Officer Urrutia, Page 19, Lines 12- 15.
[5] Officer Ramirez, Page 31, Lines 1-19.

circumstances, would reasonably believe there was a substantial risk the situation may escalate to the point where deadly force may be justified.

Therefore, I find Officers Ramirez and Urrutia's Drawing/Exhibiting to be In Policy, No Further Action.

Note: In addition to the above listed employees, there were additional personnel that either drew or exhibited a firearm during the incident. This Drawing/Exhibiting was appropriate and requires no specific findings or action in regard to these officers.

Lethal Use of Force

Law enforcement officers are authorized to use deadly force to:

- *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
- *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
- *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume No.1, Section 556.10).*

Officer Ramirez - .40 caliber, seven rounds, in a southwesterly direction from an approximate distance of 29 feet.

According to Officer Ramirez, Rivera raised the handgun in his direction. Believing Rivera was going to shoot him and his partner, he fired seven rounds from his service pistol at Rivera to stop the threat.

Officer Ramirez recalled,

> *...he's [Rivera] probably 20 feet from me and he has a gun already in his hand...Then, as I jump out of the vehicle...I see him raising...his left hand higher, now, like, more than before. So, at that moment, I believed that he was gonna shoot me or my partner. So, I was in fear for my life...at which point, I fired approximately, six to seven rounds at him. At that moment...after I fired six or seven rounds at him, he went down.*[6]

Officer Urrutia - .45 caliber, four rounds, in a southwesterly direction from an approximate distance of 30 feet.

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[6] Officer Ramirez, Page 12, Lines 2-25 and Page 13, Lines 1-16.

According to Officer Urrutia, he observed Rivera holding a handgun in his right hand. Rivera then started to walk towards them, while aiming the handgun at him and his partner. Fearing that Rivera was going to kill him, in defense of his life, he fired four rounds from his service pistol at Rivera to stop the threat.

Officer Urrutia recalled,

> *As I see the firearm, the guy's still yelling and he's now - - like I said, he's got the gun in his waist and he's aiming it...It looked like he's aiming it at me, at my partner...I tell the suspect, 'Drop the gun. Drop the gun.' The suspect - - I still see that look - - the anger of determination. I felt that this guy - - he is determined. He's going to come, he's going to kill me and my partner...I thought he was going to kill me. Fearing that he was going to kill me, I fired in defense of my life.*[7]

Based on the totality of the circumstances, the UOFRB determined, and I concur, that an officer with similar training and experience as Officers Ramirez and Urrutia, would reasonably believe Rivera's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

Therefore, I find Officers Ramirez and Urrutia's Use of Lethal Force to be objectively reasonable and In Policy, No Further Action.

Audio/Video Recordings

Digital In-Car Video System (DICVS) / Body Worn Video (BWV) – Harbor Area police vehicles were equipped with DICVS at the time of the incident; however, none of the videos captured the OIS. Officers Martinez and Sternin's DICVS captured Officers Ramirez and Urrutia redeploying to cover after the OIS and the arrest team approaching Rivera. Officers Ramirez and Urrutia did not activate their DICVS.

Harbor Patrol Division officers were equipped with BWV. Officers Ramirez and Urrutia's BWV was activated at the time of the incident and captured their actions before, during and after their OIS. Their BWV cameras were intermittently obscured by their outstretched arms and vehicle door frames and therefore, only captured limited footage of Rivera's actions and body position at the time of the OIS.

The footage that was captured of Rivera was not clear enough to determine Rivera's movements at the time of the OIS. The officers' commands and some statements from Rivera were captured on the audio of the BWV. Officers Martinez and Sternin's BWV captured their arrival and events that occurred after the OIS.

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[7] Officer Urrutia, Page 10, Lines 2-12.

Outside Video – A surveillance camera from an apartment building, located at 1149 North Wilmington Boulevard, captured Rivera walking south on the west sidewalk of Wilmington Boulevard holding an object, which appeared to be a handgun, in his right hand.

Chief's Direction

Although, it was determined that Sergeant Talmage was not substantially involved in this incident and did not receive formal findings, the UOFRB recommended, and I concur, that Sergeant Talmage would benefit from attending the Tactical Debrief to discuss lessons learned and enhance future tactical performance during similar incidents. Therefore, I will direct Sergeant Talmage to attend the Tactical Debrief.

Respectfully,

CHARLIE BECK
Chief of Police

Date: 3-1-18